Quarterly Report
of the
ATTORNEY GENERAL
of
ALABAMA

For The Period
From April 1, 1956
Through June 30, 1956
VOLUME 83

JOHN PATTERSON, Attorney General

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QUARTERLY REPORT

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Volume No. 83

TO THE STATE, COUNTY, AND MUNICIPAL OFFICERS OF ALABAMA:

This Quarterly Report of the Attorney General of Alabama, which includes all official opinions rendered by the Attorney General from April 1, 1956, through June 30, 1956, is published in compliance with the provision of Title 55, Section 228, Code of Alabama, 1940.

Under this section of the Code, I am required to send seven copies of this Quarterly Report to each judge of probate in the State and the judge of probate, in turn, is required to deliver one copy to the clerk of the circuit court, the sheriff, the tax collector, the tax assessor, the county superintendent of education, and the deputy or county solicitor of his county. This section also requires that I send a copy of this report to each circuit solicitor and the chief executive officer of each incorporated municipality in the State.

The office of the Attorney General is anxious to render prompt and efficient service to the State, county, and municipal officials. If you have any suggestions to make regarding the improvement of the service, I shall be glad to hear from you.

Sincerely,

JOHN PATTERSON,
Attorney General.

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OPINIONS

April 3, 1956

Hon. Howard Kirby,
Clerk of the Circuit Court,
Etowah County,
Gadsden, Alabama.

Sheriffs—Costs and Fees—Constitution of Alabama 1901—Mileage.

1. Since the passage and approval of Act. No. 108, Special Session 1956 (Ms.), approved February 14, 1956, further amending Title 11, Section 34, Code of Alabama 1940, sheriffs are not entitled to receive ten cents per mile when serving writ of subpoena for witness in a civil case.

2. Mileage fee provided for in Act No. 108, supra, is neither salary, fee nor other compensation and may be increased or diminished without violating Constitution of Alabama 1901, or amendments thereto.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion bearing date of March 16, 1956, is as follows:

"Please refer to Act No. 108 passed at the special session of the Legislature 1956 and approved on February 14, 1956, and render to me your opinion on the following matter:

"In said Act there appears the following provision:

" 'Serving sumons and other mesne process except subpoenas for witnesses and returning the same, one dollar fifty cents, plus ten cents per mile for each mile traveled in serving same.'

"And also in said Act there appears this provision:

" 'When the sheriff is required by law to serve any process or paper by delivering to a person, he shall receive ten cents per mile for each mile traveled in serving same.'

"My first question is this: Is the sheriff entitled to mileage for serving subpoenas in civil cases? My second question: As to increase of fees provided in said Act, are they to be effective during the present Administration or the next Administration?"

In my opinion, the sheriff is not now entitled to receive a mileage fee for serving subpoenas in civil cases.

The question of whether or not increased sheriffs' fees are presently applicable was decided in an opinion of this office under date of November 22, 1955, addressed to Hon. R. R. Shields, Sheriff of Pickens County, Carrollton, Alabama, a copy of which is enclosed for your information.

Title 11, Section 34, Code of Alabama 1940, provides for the civil schedule of fees for sheriffs in Alabama, while Title 11, Section 100, Code of Alabama 1940, provides for the criminal schedule of fees. Both Sections 34 and 100, supra, were amended by Act No. 571, General and Local Acts 1955, page 1243. Several fees and allowances and other items were increased by said amendment.

In the opinion of this office under date of November 22, 1955, supra, it was held that certain items were presently applicable to sheriffs and that other items would only be effective at the beginning of a new term for sheriffs.

Another opinion of this office, rendered under date of December 6, 1955, to Hon. Roy O. Hill, Clerk of the Circuit Court of Houston County, Dothan, Alabama, held that the sheriff was entitled to receive a fee of ten cents per mile when serving a writ of subpoena on a witness in a civil case. This holdnig was based upon an appellate court decision holding that a writ of subpoena was a mesne process.

Susbequent to the latter opinion, and on February 14, 1956, Section 34, supra, was further amended by Act No. 108, Special Session 1956 (Ms.) approved February 14, 1956. The only change made by Act No. 108, supra, is that the following, "Serving summons and other mesne process, and returning the same, one dollar fifty cents, plus ten cents per mile for each mile traveled in serving same," as contained in Section 34, as amended by Act No. 571, supra, now reads, "Serving summons and other mesne process, except subpoenas for witnesses, and returning the same, one dollar fifty cents, plus ten cents per mile for each mile traveled in serving same." There is little doubt that the amendment was a result of our opinion under date of December 6, 1955, supra. Act No. 108, supra, therefore, evidences clear legislative intent that the sheriff should not receive ten cents per mile when serving subpoenas in civil cases.

It is further my opinion that the Legislature may decrease such item without violating the Constitution of Alabama 1901, in view of the holding of this office in the opinion under date of November 22, 1955, supra. There, this office held that the mileage fee was in the nature of an expense allowance and was neither salary, fee, nor other compensation.

Very truly yours,

JOHN PATTERSON,
Attorney General.

April 3, 1956

Hon. R. L. Malone
Judge of Probate
Limestone County
Athens, Alabama

Voters—Registration—Poll Tax and Poll Lists.

1. A person who owes no poll tax for the two years next preceding, who registers on the first or third Monday in April and who is not otherwise dsiqualified, will be eligible to vote in a primary election held May 1, 1956.

2. Although registered and no poll tax due, a person could not vote in May first primary if residence requirements were not satisfied at the time of the primary, or if such person is disqualified by reason of conviction of crime or is not a member of party holding primary.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of March 19, 1956, is as follows:

"I am wondering if the persons who register today, and the 1st and 3rd Mondays in April would be eligible to vote in the May Primary Election, that is if they do not owe any poll tax.

"There has been some misunderstanding over this question, and I want your opinion as to this matter."

In my opinion, the persons referred to in your inquiry would be eligible to vote as qualified electors in the primary election to be held on May 1, 1956. Section 178, Constitution of Alabama 1901, as amended by Amendment XCVI, proclaimed ratified December 28, 1953, provides as follows:

"Section 178. To entitle a person to vote at any election by the people, he shall have resided in the state at least two years, in the county one year, and in the precinct or ward three months, immediately preceding the election at which he offers to vote, and he shall have been duly registered as an elector, and shall have paid on or before the first day of February next preceding the date of the election at which he offers to vote, all poll taxes due from him for the two calendar years next preceding. Provided, that any elector who, within three months next proceding the date of the

election at which he offers to vote has removed from one precinct or ward to another precinct or ward in the same county, incorporated town, or city, shall have the right to vote in the precinct or ward from which he has so removed, if he would have been entitled to vote in such precinct or ward but for such removal."

The persons referred to in your inquiry are said to owe no poll tax. I assume that your statement that said persons owe no poll tax means that by reason of age or other exemption, said persons owed no poll tax which was due and payable on October 1, 1955, and which was delinquent after February 1, 1956, and also the poll tax which was due and payable by said persons on October 1, 1954, and which was delinquent after February 1, 1955.

If such persons are duly registered and not otherwise disqualified, they may vote in the May primary. See Quarterly Report of Attorney General, Vol. 73, page 81; Vol. 51, page 42. There are several exemptions which should be numerated. When a person registers, for example, at the present time, he is allowed to register if at the time of the November election he shall have satisfied his residence requirements—two years in the State, one year in the county, and three months in the ward or precinct. See Section 178, as amended, supra, and Section 181, Constitution of Alabama 1901. So, if a person registers at the time referred to in your inquiry, he would be eligible to vote in the primary in May, assuming that he had, at the time of the primary election, satisfied all residence requirements. It is possible that there may be those who register at the time referred to in your inquiry who will not satisfy their residence requirements until the November election. Of course, those persons could not vote in the primary. See Vol. 51, page 42, supra.

Furthermore, a person may register at the time referred to in your inquiry and owe no poll tax for the two years next preceding, and, therefore, be eligible to vote. However, should such person become disqualified by reason of conviction of a crime, as set out in Section 182 of the Constitution of Alabama 1901, such person could not vote even though he were registered and owed no poll tax.

Further, although the persons referred to in your inquiry may be registered at the time therein indicated and may owe no poll tax, they may not be entitled to vote unless they are members of the party participating in the primary. Title 17, Section 347, Code of Alabama 1940.

Generally speaking, therefore, persons not otherwise disqualified who register on the first or third Monday in April, 1956, and who owe no poll tax for the two years preceding (poll tax due and payable October 1, 1955, and delinquent after February 1, 1956, and poll tax due and payable October 1, 1954, and delinquent after February 1, 1955) would be eligible to vote in the May first primary election with the exception of those above numerated.

Yery truly yours,

JOHN PATTERSON,
Attorney General.

April 18, 1956

Hon. Pleas Looney,
Executive Director,
Planning and Industrial Development Board,
State of Alabama,
711 High Street,
Montgomery 5, Alabama.

State Planning and Industrial Development Board—County Industrial Development Boards— Planning and Zoning—Municipalities.

Municipalities have authority to contribute to county industrial development boards or to the State Planning and Industrial Development Board of Alabama for the purpose of conducting an industrial potential survey under the facts stated, provided that the amount contributed by any particular municipality shall be expended towards the industrial development of the respective area of the municipality which makes the contribution.

Opinion by Assistant Attorney General Screws.

Dear Sir:

Your request for an official opinion bearing date of April 16, 1956, is as follows:

"We would like your opinion on the legality of the municipalities' contributing to a county industrial development board or to the State Planning and Industrial Development Board of Alabama. In order that you might be familiar with our plan, we are outlining below our procedure.

"To inaugurate a most cooperative effort on the county level, we are going into every county in the State of Alabama to meet with the county governing bodies and ask that a county industrial development board be set up. When this is done, we then ask the county to make an appropriation to the Board for the purpose of making an industrial potential survey under the supervision of this office. In some cases the county has made the entire appropriation which is sufficient for such a survey. However, in some instances we find the county finances insufficient to cover the amount needed for an appropriation. We then ask that the municipalities in the respective county to make an appropriation to the county industrial development board in order that enough money might be available for this survey and for the other necessary functions of a county industrial development board.

"This poses the problem on which we would like your opinion as to the legality. De we have the authority, under the bill in which this Department is authorized, to ask a municipality to contribute or appropriate money to the county industrial development board or the State Planning and Industrial Development Board for the purpose of an industrial survey and other matters related to industrial development of the respective area? The money appropriated would directly benefit the municipality appropriating the money.

"This Department would appreciate very much an immediate ruling on the legality of the above situation."

In answer to your inquiry, it is my opinion that municipalities have authority to contribute to a county industrial development board or to the State Planning and Industrial Development Board of Alabama for the purposes set forth in your inquiry, provided that the amount contributed by any particular municipality shall be expended towards the industrial development of the respective area of the municipality which makes the contribution.

The State Planning and Industrial Development Board was created and its authority and functions defined by Act No. 342, General and Local Acts 1955, page 765 (Title 55, Section 373 (6a-e), 1955 Cumulative Pocket Part, Code of Alabama 1940). Section 2 of said Act provides in pertinent part as follows:

". . . The director shall establish a division of local planning and such other divisions or units as may be necessary or convenient to the efficient and expeditious performance of the functions and duties of the Board. The division of local planning above referred to may enter into contractual arrangements with Alabama municipalities providing for technical planning service to assist each municipality in making and adopting a comprehensive municipal plan including such elements as a zoning plan and ordinance, subdivision regulations, a major street plan, a park and playground plan, an urban redevelopment plan and such related plans and studies as are necessary for a comprehensive municipal plan. The division of local planning is further empowered to enter into contracts with Federal agencies for the purpose of assisting Alabama municipalities to prepare comprehensive municipal plans. The division of local planning is also empowered to accept and expand money, grants-in-aid made available from any source, and to supplement Federal or local funds available for making local planning studies designed to produce a comprehensive municipal plan. The division of local planning is further empowered to enter into contracts with regional planning commissions in Alabama for the purpose of making a comprehensive plan for the region. The director may assign and re-assign functions and duties. All functions and duties of the Board shall be exercised by the director acting by and through such administrative divisions or units as he may determine, and he shall have all power and authority necessary or convenient to carry out the functions and duties of the Board, and the orders, rules, and regulations of the Board, subject, however, to the jurisdiction and direction of the Board. . . ."

Moreover, by Section 3 of said Act, the authority of the State Planning Board agency created by Act No. 183, General Acts 1943, page 163, was given to the new State Planning and Industrial Development Board. Section 5 of Act No. 183, supra, as amended by Act No. 571, General and Local Acts 1949, page 899 (Title 55, Section 373 (5), 1955 Cumulative Pocket Part, Code of Alabama 1940), grants to the board certain powers and authority, and provides in part as follows:

> " . . . The board shall upon the request of the board of county commissioners of any county or the council of any municipality or subdivision, make a study of and report upon any planning problem of such county, municipality, or subdivision submitted to it, and the board may agree with any such board, council, or body as to the amount, if any, to be paid for such service.

In view of the above quoted statutory provisions, it is my opinion that a municipality has the expressed or implied authority to contribute either to a county industrial development board or to the State Planning and Industrial Development Board for the purpose of making such an industrial potential survey as set forth in your letter, provided that the money contributed by any certain municipality shall be expended for the survey of the respective area of the municipality making the contribution.

Aside from the statutory authority above discussed, a municipality has certain inherent powers in regard to promoting its development and general welfare. An industrial potential survey such as the one under consideration is a preliminary step incident to obtaining industries for the benefit of a municipality, thus promoting its development and general welfare. See **Fitts v. Commission of City of Birmingham,** 224 Ala. 600, 141 So. 354; **Lang v. City of Mobile,** 239 Ala. 331, 195 So. 248; Quarterly Report of Attorney General, Vol. 37, page 79; Vol. 55, page 110.

Yours very truly,

JOHN PATTERSON,

Attorney General.

April 23, 1956

Hon. L. H. McDonald,
Judge of Probate,
Winston County,
Double Springs, Alabama.

Jurors and Juries—Clerks of Circuit Courts.

Title 30, Section 15, Code of Alabama 1940, as amended by Act No. 516, General and Local Acts, page 649, authorizies the jury commission in counties of 60,000 or less population to employ circuit clerk or another as clerk of jury commission.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of April 12, 1956, is as follows:

"Title 30, Section 15, as amended provides for Clerk of the Jury Commission; remuneration.—In counties having sixty thousand population or less by the last federal census preceding the employment, the clerk of the circuit court may be employed as the clerk of the jury commission and in such counties the clerk of the jury commission whether he be the clerk of the court or not, shall be paid for his services rendered under the direction of the jury commission the sum of five dollars per day while actually engaged in performing his duties, to be paid out of the county treasury upon the order of the president of the jury commission. This section would apply to this county as we are under 60 thousand population.

"There are those who contend that it is compulsary that the Jury Commission employ the Circuit Clerk as Clerk of the Jury Board.

"Please give me your opinion as to whether this section would require the Jury Commission to employ the Circuit Clerk or if they can employ any one they wish."

As stated in your inquiry, Winston County has a population of 18,250 by the 1950 Federal Decennial Census, and, therefore, would be one of those counties having a population of 60,000 or less within the meaning of Title 30, Section 15, Code of Alabama 1940, as amended by Act No. 516, General and Local Acts 1953, page 649.

In my opinion, the jury commission may employ the circuit clerk as clerk of the jury commission if the commission so desires, but, on the other hand, the commission may employ any other person instead of the clerk of the circuit court.

Section 15, as amended, supra, states that in those counties having 60,000 or less population, the jury commission may employ the circuit clerk as clerk of the jury commission. Section 15, as amended, supra, further provides for certain compensation to be paid to the clerk of the jury commission "whether he be the clerk of the court or not." It is clear, therefore, that the provisions allowing the jury commission in certain counties to employ the circuit clerk in another capacity, namely, clerk of the jury commission, are permissive. It is entirely a matter for the jury commission to decide as to whether it will employ or will not employ the circuit clerk as clerk of the jury commission. See Quarterly Report of Attorney General, Vol. 20, pages 111 and 186.

Very truly yours,

JOHN PATTERSON,
Attorney General.

May 8, 1956

Hon. Hugh S. Patterson,
Mayor,
City of Gadsden,
Gadsden, Alabama.

Airports—Municipalities.

1. Where municipal property has been abandoned from public use, or is not devoted thereto, it may be disposed of by the governing body of the municipality when acting in good faith and without fraud.

2. The City of Gadsden may reconvey property to the United States where said property was obtained by the city from the United States for public airport purposes and the city is prevented from using said property for said purposes.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion bearing date of April 20, 1956, is as follows:

"Confirming our telephone conversation of Thursday, April 19th, I am pleased to enclose herewith the following documents:

"1. Deed record '396', Page 227 dated February 16, 1949 being the original deed from the U. S .A. to the City of Gadsden.

"2. Deed record '401', Page 489 dated May 4, 1949, being a supplementary correction deed involving the same tract.

"3. Deed record '379', Page 393 dated August 3, 1948 from the U. S. A. to the City of Gadsden. Deed describes other property but contains certain stipulations adopted by reference in the first two deeds mentioned above.

"4. Copy of Ordinance No. 1751 passed by the City Commission of Gadsden on April 18, 1956.

"5. Copy of letter dated April 18, 1956 addressed to the District Engineer, Corps of Engineers, Mobile.

"6. Copy of legal opinion dated April 18, 1956 signed by the city attorney of the City of Gadsden as to the authority of the City Commission to authorize delivery of the deed. (In this opinion are the references deemed pertinent.)

"As stated to you over the telephone the lands which are involved in the conveyance by the City to the U. S. A. are the lands originally owned by the U. S. A. and were designated as the 829th Specialized Air Force Depot, and the City acquired the title from the U. S. A. by virtue of the deeds outlined above, and under the conditions as set forth in Public Law 289, 80th Congress, and Public Law 311 of the 81st Congress, and other generally applicable regulations and statutes.

"The question has been raised is whether or not the City Commission of the City of Gadsden has the authority to re-convey the title to the U.S.A. for a nominal consideration, and the benefits to be derived by the community by the re-establishment of the Depot as a permanent installation with the resulting expansions, increase in payrolls and the like.

"In other words, and in short, the City has been denied the use of this property for the originally intended purpose since July 1st, 1951, when the Depot was re-established on a temporary basis and the U. S. A. took possession under a lease calling for only a nominal consideration, and the Depot has been in continuous operation since that date, and is now in operation. So to all intents and purposes the originally intended use of the property is not possible so long as the Depot is in existence.

"The installation has been declared permanent, expansion is anticipated and the commensurate increase in benefits to the City materially will pursue. This is to request, therefore, that you render an opinion to the City of Gadsden to the effect that the City Commission of the City of Gadsden, Alabama, is vested with legal capacity to re-convey the property under the conditions and for the consideration stipulated.

"If anything further is required of my office please advise and I will respond promptly."

It appears from your request and the documents attached thereto that the property here involved was deeded to the City of Gadsden to be used for public airport purposes; that the city has been prevented from using said property for said purposes since July 1, 1951, when the 829th Specialized Air Force Depot was reestablished on said property; and that said depot has now been made a permanent installation.

The Supreme Court of Alabama has held that municipal property abandoned from public use, or not devoted thereto, may be disposed of by the governing body of said municipality when acting in good faith and without fraud. See **Board of Revenue of Etowah County, et al v. Hutchens,** 250 Ala. 173, 33 So. 2d 737, and authorities cited therein.

Applying the rule set forth in **Board of Revenue of Etowah County, et al. v. Hutchens,** supra. since the City of Gadsden has been prevented from using the property here under consideration, for the purposes for which said property was acquired, and since the city will be prevented from using said property for such purposes in the future, I am of the opinion that the City of Gadsden may reconvey said property to the United States under the conditions and for the consideration stipulated in you. request.

Very truly yours,

JOHN PATTERSON,
Attorney General.

May 21, 1956

Hon. D. Donald Word, Mayor,
City of Scottsboro,
Jackson County,
Scottsboro, Alabama.

Counties — Courthouses — Licenses — Municipalities — Sheriffs — Taxation.

1. A municipality may levy and collect a privilege license on a business conducted within its corporate limits even though said business is conducted on property belonging to the county.

2. The governing body of the county has control of the courthouse and grounds and the sheriff has charge thereof under the supervision of such governing body.

3. The governing body of the county may lease that portion of the courthouse and grounds not needed for public use.

4. The sheriff may not, without instructions from the county governing body, allow a private business to be conducted on the courthouse grounds.

5. The county governing body may lease a portion of the courthouse grounds, not needed for public use, to one who wishes to conduct a private business thereon.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion bearing date of April 26, 1956, is as follows:

"Will you please render your decision on the following questions at your very earliest convenience:

"1. Make the city municipality legally collect city privilege license against persons selling, or offering for sale sandwiches, drinks, etc., on the property belonging to the county. Such property being around the court house square?

"2. Can the county official who is custodian of such property give permission for such selling on such property?

"No objection has been made by the county officials under whose control said property lies."

By virtue of Title 37, Chapter 15, Article 3, Code of Alabama 1940, as amended, a municipality may levy and collect privilege licenses on businesses conducted within its corporate limits.

I am of the opinion that, insofar as the power of a municipality to levy and collect such licenses is concerned, it is immaterial that such businesses are conducted on property belonging to the county if said property is located within the corporate limits of the municipality.

Therefore, your first question is answered in the affirmative.

The governing body of the county has control of the courthouse and grounds and the sheriff has charge thereof under the supervision of such governing body. **Quarterly Report of Attorney General, Vol. 18, Page 159.**

The governing body of the county may lease that portion of the courthouse and grounds not needed for public use. **Cf. Jackson v. Ball, 211 Ala.** 273, 100 So. 327, and **Corning v. Patton,** 236 Ala. 354, 182 So. 39.

Therefore, in answer to your second question, I am of the opinion that your sheriff may not, without instructions from the county governing body, allow a private business to be conducted on the courthouse grounds. However, the county governing body may lease a portion of said grounds, not needed for public use, to one who wishes to conduct a private business thereon.

Very truly yours,

JOHN PATTERSON,
Attorney General.

May 22, 1956

Hon. C. C. Horton
Director
Department of Veterans Affairs
CAPITOL

Poll Tax and Poll Lists—Exemptions—Military and Naval Affairs—Veterans.

A person who has honorably served in the military service of United States during the times set forth in Amendment XC to the Constitution of Alabama 1901, or during hostilities as defined in that Amendment, is entitled to exemption from poll tax even though he has not received a discharge from the military service but rather a certificate of service showing that he has served honorably in the military service and is now assigned to reserve status because of a continuing military reserve obligation.

Opinion by Assistant Attorney General Rinehart.

Dear Sir:

Your request for an official opinion bearing date of May 3, 1956, is as follows:

"Please grant us the benefit of your opinion concerning the following question which relates to exemptions from poll tax to separated servicemen. The particular question which we wish to present at this time is whether or not the statute conferring such poll tax exemption contem-

plates that a formal discharge is required or whether any notice or paper of separation which reflects honorable military service within the prescribed periods will suffice for the issuance of such exemption.

"The several branches of the military services have in many instances departed from the old custom of issuing discharges (in the form previously known) because of the fact that servicemen are often released while still owing a reserve obligation. In lieu of the former discharges certain other types of separation papers and 'Certificates of Service' are issued. Such a 'Certificate of Service' might contain phraseology such as 'This certifies that Private John Doe has completed 3 years, 1 month, and 21 days of excellent service and is assigned to reserve status.'

"We are aware that the language of the statute makes no reference to the type or kind of certificate held by the veteran but simply requires honorable service.

"Since veterans are having some difficulty with certain county officials in respect to the type of certificate held by them we would be appreciative of your opinion for distribution as needed concerning the type of evidence of honorable service which could properly be required."

The answer to your question is contained in Amendment XC to the Constitution of Alabama 1901. The wording of this amendment makes it clear that the term "honorable service" means service in the United States Army, Navy, Air Forces, Marine Corps, Coast Guard, or any reserve or auxiliary complement of said service. The exemption from payment of poll tax is, however, forfeited by a person discharged dishonorably from such service.

The evident intention of the Legislature was to exempt from the payment of poll tax persons who had served in the military service of the United States during certain listed periods of time or at any time past, present or future when the United States was, is or shall be engaged in hostilities whether as the result of a declared war or not with any foreign state. If the veterans to whom you refer served honorably during the times set forth in Amendment XC, supra, or during the "hostilities" provided for by that amendment, they are eligible for exemption from poll tax unless dishonorably discharged.

In the past separation from service was complete and it was necessary only to look at the type of discharge (honorable, general, bad conduct or dishonorable) to determine whether or not the particular veteran was eligible for exemption. Today, however, a person serving in the armed services is not given a discharge until he has fulfilled all military obligation, both active duty and reserve. However, the certificate of service now issued to those persons who have not completed their reserve obligation is comparable to the honorable discharge of former years, except that for the purposes of reserve duty, the particular armed service retains control over them by not

granting a discharge, but merely supplying a certificate of service covering the period of the veteran's active service. It is my opinion that if the certificate of service evidences honorable service by a veteran, he is eligible for exemption from poll tax even though not yet discharged from the military service, but rather retaining a reserve status. See Quarterly Report of Attorney General, Vol. 62, page 15, holding that a person who is honorably serving in the military service of the United States during participation in the Korean conflict is entitled to exemption from poll tax. This opinion is buttressed by the fact that Amendment XC, supra, contains reference to "any reserve or auxiliary complement of any of said services."

Of course, the certificate of service must show that the veteran has served in time of war or hostilities as defined by Amendment XC and as further interpreted by an opinion of this office dated February 16, 1955 (Quarterly Report of Attorney General, Vol. 78, page 42). Furthermore, if at a subsequent time, because of failure to fulfill his reserve obligation or because of misconduct on active duty, a veteran should be dishonorably discharged from any of the armed services as defined in Amendment XC, supra, he would, of course, forfeit his right to the exemption.

To recapitulate, it is my opinion that a certificate of service showing honorable service in any of the armed services, as defined in Amendment XC, supra, is sufficient to warrant exemption from poll tax if the service was in time of war or hostilities, even though it is not in form a discharge because of a veteran's continuing reserve obligation. The obvious intent of the Legislature and the people of Alabama was to grant this exemption to persons serving honorably in the military service and until they forfeit such right by reason of a dishonorable discharge. If his certificate evidences such honorable service, a veteran should be exempt from the payment of poll tax.

Very truly yours,

JOHN PATTERSON
Attorney General

June 1, 1956

Honorable J. M. McCullough, Jr.
Commissioner
Board of Corrections
CAPITOL

Corrections and Institutions, Department of—Convicts—Jails—Prisons and Prisoners—Sheriffs.

1. The Board of Corrections is charged with supervision of the feeding of prisoners in jails.

2. The Board of Corrections may limit the type and variety of food served or may permit the sheriff to serve whatever available within monetary limits set by law.
3. Sheriff may feed prisoners whatever food he desires, so long as such food is clean, wholesome and palatable and does not exceed sixty cents (60c) per prisoner per day.

Opinion by Assistant Attorney General Straub.

Dear Sir:

Your request for an official opinion, bearing date of March 28, 1956, is as follows:

"On January 10, 1956 the Board of Corrections forwarded a letter to all sheriffs in State of Alabama reading as follows:

" 'It has been brought to my attention that pork and several other food items are not listed on Form b as items that can be purchased for the feeding of prisoners in jail.

" 'In the future you may purchase food of any variety using your own discretion as to prices, so long as you do not exceed the amount allowed by law which is 60c.

" 'If you have any further problems regarding the feeding of prisoners, do not hesitate to get in touch with us as it is our wish to cooperate with you in every way.'

"Based upon the instructions given them in this letter, several of the sheriffs made purchases of food during the month of February such as, steak, canned pears, cake, apple sauce, etc. that were not listed on Form B. A question has arisen as to the legality of these purchases and consequently the sheriffs have not been paid for those items such as steak, pears, cake, apple sauce, etc.

"The question I would like answered is whether or not it is within the jurisdiction of Board of Corrections to set out what variety of food may be purchased by the sheriffs for feeding of prisoners while confined in the various jails in the State; and further, whether or not they should be paid for these items, or any other items of food stuff so long as the total amount per day does not exceed 60c per prisoner."

Under the provisions of Title 45, Section 152, Code of Alabama 1940, the Board of Corrections is given the authority and duty to supervise the feeding of prisoners in jails. I find no law stating what varieties of food may or may not be served. Since the Board of Corrections supervises the feeding, it is my opinion, that you may, if you so desire, limit the type and variety of food,

or you may permit the various sheriffs to serve whatever they care to so long as they stay within the monetary limits set by law.

Under the provisions of Title 45, Section 144, Code of Alabama 1940, as amended by Act No. 309, General Acts 1945, page 502, the several sheriffs of the State are allowed to be paid from State funds, "such amount as is actually necessary for food for each prisoner daily, but the said amount so allowed cannot exceed sixty cents per capita".

The Department of Finance, under the provisions of Title 45, Section 148, Code of Alabama 1940, is required to examine the statements made by sheriffs concerning the feeding of prisoners and "if the total expenditure for feeding state and county prisoners as contained therein does not exceed the amount allowed for feeding each state and county prisoner confined in said jail, the comptroller shall draw a warrant upon the treasurer in favor of said sheriff for the amount so expended for feeding said prisoners".

Therefore, it is my opinion, that unless you see fit to limit the type of food served, a sheriff may feed prisoners whatever food he so desires so long as such food is clean, wholesome and palatable and the cost thereof does not exceed sixty cents (60c) per prisoner per day.

Should a sheriff attempt to claim more than sixty cents (60c) per prisoner per day, the Comptroller could not issue a warrant for the excess amount. However, if the statement provided by the sheriff is otherwise in order, the Comptroller, regardless of the food served, should draw the above warrant.

Very truly yours,

JOHN PATTERSON
Attorney General

June 6, 1956

Hon. J. R. Reynolds,
Hon. James T. Spurlin,
Members,
Bullock County Board of Registrars,
Union Springs, Alabama

Registration—Boards of Registrars—Elections—Voters — Contsitution of 1901.

1. Board of registrars may review applications without reference to time limitation.

2. Certain defects in application discussed as affording basis for purging.

3. Under rule making power, board of registrars may require testimony of supporting witness, but may waive or suspend such requirement.

4. Action of board accepting or rejecting applicant should appear on application and questionnaire form, but issuance of certificate of registration or appearance of name of registrant on registrars' list returned to probate judge is evidence of fact of registration and presumptive evidence of voter's qualification.

5. On and after December 19, 1951, questionnaire and application must be in writing.

6. Prior to December 19, 1951, applicant for registration could qualify although unable to read and write; on and after said date applicant must be able to read and write, unless inability due solely to physical handicap.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of February 28, 1956, is as follows:

"A question has arisen concerning the legality of the registration of a large number of voters in Bullock County. The matter arises out of irregularities in the registration of voters over a period of the last six or eight years. We have examined the original applications and the action of the board pertaining to the same. Among other things we find the following:

"A. Some questions were not answered and some questions were answered incompletely.

"B. The registrar failed to sign the oath on the application.

"C. The portion concerning the person vouching for the applicant is not completely filled out, in some instances it is not signed by the supporting witness and the verification is not signed by a member of the board.

"D. On the application there is a printed form showing the action of the board and in many cases this was not signed by two members of the board. In each of these instances a certificate of registration was signed by two members of the board and issued to the applicant as provided by Section 29 of Title 17 of the Code and in each instance the name was entered on the registration book and furnished to the Judge of Probate. There were numerous other irregularities.

"We do not find any evidence of actual fraud in the registration of these voters but the same were handled in an extremely careless and negligent manner. The members of the previous board advise us that they did not consider it necessary to sign the form on the application but that under their precedure the issuance of the certificate of registration to the voter and the placing of the applicant's name on the registration book and furnishing the same to the Judge of Probate, constituted the official action of the board.

"We have been advised that the Board of Registrars are judicial officers under the provisions of Section 25 of Title 17 of the Code. Further that the action of the board in registering a voter has the force and effect of a final judgment and is not subject to review by a subsequent board for mere irregularities and in the absence of fraud.

"We would like to submit to you the following questions:

"1. To what extent can we review the applications for registration and the action on the same by previous boards.

"In the absence of fraud do we have any right to even examine such applications and determine their sufficiency. Do irregularities in such applications, such as those enumerated above in subdivisions a, b and c, constitute fraud in the absence of other proof of actual fraud.

"2. Is the testimony of a supporting witness necessary unless the same is required by a rule of the board. If the board has such a rule does it have the right to waive it provided there is no discrimination in so doing.

"3. What constitutes the final action of the board in registering a voter. Is it necessary that the action be shown by signing the form on the application or can the board follow a procedure whereby a certificate of registration is issued to the voter and the voters name is entered on the registration book and the same furnished to the Judge of Probate. Is this sufficient to show that the board actually took action and registered the voter or is other action necessary.

"4. On September 17, 1953 an amendment was approved to Section 31 of Title 17 of the Code. This amendment of course followed the Constitutional Amendment. Prior to that amendment was it necessary for the examination of an application to be in writing. As I read Title 31 of the Code of 1940 the board could merely examine an applicant under oath and take testimony touching his qualifications and the examination did not have to be in writing.

"5. Can an elector's name be stricken from the registration list because he is unable to read and write, if he was legally registered prior to September 17, 1953.

"You realize that it is difficult to propound specific inquiries covering every situation with which we are confronted. There are some five hundred or more voters involved and the facts vary with each voter. The real question is what is a fraudulent registration as contrasted with negligence and carelessness. Some of our previous boards acted on the idea that if they examined an applicant and found the applicant qualified and issued to such applicant a certificate and a certificate to the Judge of Probate and placed his name on the registration list, it was sufficient. They did not carefully keep all the records and there are numerous clerical commissions. There was never any actual fraud on the part of anyone."

1. In answer to your inquiry numbered 1, it is my opinion that the present board of registrars may review applications for registration which have been previously made, and that action of the board of registrars on said applications is without limitation as to time. The sufficiency of the application may be determined even in the absence of fraud. Defects in said applications may or may not afford a basis for purging the name of a registrant in accordance with Title 17, Sections 44-52, Code of Alabama 1940.

2. In answer to your inquiry numbered 2, the board of registrars has power to promulgate rules and regulations, having the force and effect of law, requiring the testimony of the supporting witness. Such testimony is not necessary unless the board has adopted such rules. Even though the rule is adopted, the board may suspend its operation in proper cases without discrimination.

3. Proper procedure requires the action of the board to be shown by the signature of at least two members on the form of the application furnished by the Department of Finance and Secretary of State. In the absence of the signatures of two members of the board of registrars on said application form, a certificate of registration signed by two members of the board or the appearance of the name of a person on the list prepared by the board of registrars under the provisions of Title 17, Section 54, Code of Alabama 1940, as amended by Act. No. 483, General Acts 1947, page 333, is evidence of due registration and qualification.

4 and 5. On and after December 19, 1951, the date upon which Amendment XCI was proclaimed ratified, the questionnaire included in the application for registration must be in writing. Prior to that time the examination of applicants was not required to be in writing, but by rules and regulations boards could require same. Applications for registration as distinguished from the examination could be required by the board to be in writing prior to December 19, 1951.

On and after December 19, 1951, applicants for registration must be able to read and write unless said appplicant is unable to read and write solely because of physical handicap.

Prior to December 19, 1951, an applicant could be registered as a qualified elector even though he could not read and write if the applicant owned certain property or was married to a person owning certain property (Section 181, paragraph 2, Constitution of Alabama 1901); also if the applicant's inability to read and write was due solely to physical disability (Section 181, paragraph 1, Constitution of Alabama 1901).

Unless otherwise stated herein, this opinion has reference to the action of the board of registrars and the registration of applicants on and after December 19, 1951, the date upon which Amendment XCI to the Constitution of Alabama 1901 was proclaimed ratified. Said amendment is known as the Voter's Qualification Amendment.

In my opinion, the present board of registrars may review applications for registration received and acted on by the present and previous boards. Such applications, including the questionnaire and the answers thereto and the oath of the applicant, are part of the records of the board of registrars and may be reviewed by the members of the board of registrars without reference to a time limitation.

In connection with the duties of the board of registrars in purging the names from the list of qualified electors, this office held in an opinion found in Biennial Report of Attorney General, 1934-36, page 453:

"In my opinion the Board of Registrars are entitled to all original registration papers with which to purge the poll list. The purpose of the Act as set out above may require checking poll list for a period of years prior to 1935, and it is my opinion that the authority of the Board of Registrars to check the poll list is broad enough to include lists prior to 1935 in order that the purpose and intention set out in the Act, supra, may be accomplished."

Further, the opinion stated:

"In reply to your third question, I wish to advise that in my opinion this purging should not be confined to the year 1935."

You are advised, therefore, that the board of registrars in connection with its purging duties may review applications for the current and prior years without reference to time.

The causes for purging a name from the list of qualified electors are enumerated in Title 17, Section 44, Code of Alabama 1940. This section provides as follows:

§ 44. Time for purging list of registration.—The board of registrars shall meet in each county on the first Monday in January, 1940, and every two years thereafter, for purging the registration list, and may continue in

session one week. The names of those who have died, become non-residents of the state, become insane, and been so declared by inquisition of lunacy, or who have been convicted of an offense mentioned in section 182 of the constitution, since being registered, or otherwise disqualified as electors under the provision of the constitution, and any names which may have been fraudulently entered on such list, shall be stricken from the registration list. Any member of the board of registrars who neglects or willfully refuses to perform the duties herein required of him shall be guilty of a misdemeanor and on conviction, shall be punished by a fine of not more than five hundred dollars and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months. When said board of registrars have sufficient evidence furnished them that any elector has permanently moved from one precinct to another in any county said board of registrars shall transfer the name of such elector to the registration list of the precinct to which such elector has moved."

It is to be noted that the board of registrars has authority not only to strike a name that has been fraudulently entered on such list, but other causes are also sufficient. Therefore, it need not appear that a name was fraudulently entered before the board of registrars has authority to purge or strike that name from the list.

You have inquired specifically as to whether or not defects enumerated in paragraphs A, B and C of your inquiry are sufficient to afford a basis for striking a name from a list in the absence of fraud. It is necessary to consider A, B and C separately.

A. It appears that on some of the forms questions were not answered and some questions were answered incompletely.

The Voters' Qualification Amendment (Amendment XCI, supra) required the Supreme Court of Alabama to prepare a questionnaire, which questionnaire was for the purpose of aiding the board of registrars to determine an applicant's qualifications. Amendment XCI, supra, requires that "such questionnaire shall be answered in writing by the applicant, in the presence of the board without assistance."

If a question is not answered at the time an applicant is before the board for registration, it is my view that the board may refuse to register such applicant at that time for failure to so answer the questionnaire. If, however, the board of registrars, in reviewing applications wherein the applicant has already been registered by the board and his name appears on the list of qualified electors, finds that a question included on the questionnaire has not been answered or is incomplete, the absence of such answer or the incompleteness of such answer would not in and of itself constitute a ground for purging the registrant's name from the list. Section 44, supra, enumerates the causes for purging, and once a person is duly registered as shown by the registration lists the fact of registration is conclusive and the person is presumed to have the

qualifications of voters. **Shepherd v. Sartain**, 185 Ala. 439, 64 So. 57. For such person to be purged. it must appear to the board by some proper and affirmative evidence that said person has died, has become a nonresident of the State, become insane or convicted of offenses mentioned in Section 182 of the Constitution, supra, or is otherwise disqualified, or that his name has been fraudulently entered on the list, before his name can be stricken. Section 44, supra. Such facts cannot be shown solely because of the lack of an answer to questions on the questionnaire or incomplete answers to such questions.

B. If it appears from an examination of the form of application that the signature of a member of the board of registrars does not appear on the oath to be taken by the applicant, it is my view that the board of registrars would be justified in their discretion to propose, under the provisions of Title 17, Section 46, Code of Alabama 1940, that the name of the applicant be stricken and issue notice to said registrant to appear before the board as provided by law and to show cause why his name should not be stricken.

Amendment XCI, supra, requires applicants to take an oath to support and defend the Constitution of the United States and the Constitution of the State of Alabama. The oath must further include a statement by the applicant disavowing a belief in or affiliation at any time with any group or party which advocated the overthrow of the government of the United States or the State of Alabama by unlawful means. Amendment XCI, supra, further requires that the answers to the questionnaire and the above described oath be signed by the applicant and be sworn to before a member of the county board of registrars.

Since it does not appear from the application form that the oath was signed and sworn to by the applicant before a member of the board of registrars because the signature of the member of the board of registrars is lacking, the reviewing board, in my opinion, would be justified in asking the registrant to furnish proof that he did sign and take such oath before a member of the board of registrars at the time of his registration. If the registrant could not establish such fact, he should then, in my opinion, be asked to take the oath before a member of the board. If he takes said oath then his name should not be stricken from the list. If he refuses to take said oath, then the board may strike his name from the list on the grounds that the registrant is otherwise disqualified within the meaning of Section 44, supra.

C. A board of registrars has authority to make rules and regulations. Title 17, Section 53, Code of Alabama 1940. Such rules and regulations are said to have the force and effect of law and the rule requiring a supporting witness has been upheld by the Supreme Court of Alabama as reasonable. **Williams v. Wright**, 249 Ala. 9, 29 So. 2d 295. It is my view, however, that a board of registrars may suspend or waive its own rule or regulation in proper cases and without discrimination. See 14 Am. Jur., Courts, Section 157, page 361. If it appears, therefore, that two members of the board of registrars have signed the application form under that part headed "Action of Board," it is

my opinion that the rule of the board requiring the examination of a supporting witness has been waived or suspended by the board. The failure, therefore, of the form to include complete information concerning the examination of a supporting witness, or the failure of the supporting witness to sign, or the failure of a board member to sign would not constitute grounds for purging in accordance with Section 44, supra.

Your question numbered 2 has been answered above. The board may require the testimony of a supporting witness, **Williams v. Wright,** supra, but may waive or suspend a rule requiring the examination of a supporting witness without discrimination.

In answer to your question numbered 3, it is my opinion that proper and regular procedure requires that at least two members of the board of registrars sign the application form in the space provided for on said form under the title "Action of the Board." The signature of two members in this place on the application indicates there is evidence of the fact that the applicant has been accepted for registration.

In the event, however, that two members fail to sign in this place upon the form of application, it is my opinion that the issuance of a certificate of registration (Title 17, Section 29, Code of Alabama 1940) or the inclusion of an applicant's name upon the list of names registered and returned to the probate judge (Title 17, Section 54, Code of Alabama 1940) is also evidence of final action by the board of registrars. It was said in the case of **Shepherd v. Sartain,** supra, that "the registration books and lists prepared and kept by the county board of registrars are conclusive as to the fact of the registration of those voters whose names affirmatively appear thereon, and are presumptive evidence of their qualifications as voters." Cf. Quarterly Report of Attorney General, Vol. 18, page 273.

In answer to your inquiries numbered 4 and 5, you are advised that prior to December 19, 1951, the date that Amendment XCI was proclaimed ratified, there was no statutory or constitutional requirement that the examination of an applicant be in writing. The board of registrars was authorized under the provisions of Title 17, Section 31, Code of Alabama, as amended by Act No. 754, General and Local Acts, page 1015, approved September 17, 1953, "to examine under oath or affirmation all applicants for registration, and to take testimony concerning the qualifications of such applicants." Prior to that time, December 19, 1951, boards of registrars were authorized under their rule making power (Title 17, Section 53, Code of Alabama 1940) to require examinations to be in writing.

The application of a person desiring to become a qualified elector as distinquished from the examination of the applicant was customarily made in writing prior to December 19, 1951. The oath required by Section 31, as amended, supra, was required to be in writing and subscribed by the applicant. Therefore, prior to December 19, 1951, the application, including the oath required

by Section 31, as amended, supra, was required to be in writing; however, the examination was not.

On and after December 19, 1951, the examination of the applicant, consisting of the questionnaire prepared by the Supreme Court under the provisions of Amendment XCI, has been required to be in writing by the applicant in the presence of the board without assistance. The oath required by said amendment is also required to be in writing. This amendment also allows the board to receive information respecting the applicant and the truthfulness of any information furnished by him. Such additional information is not required by the Constitution or statutes to be in writing. It should be added, however, that the board has the authority to require such examinations to be in writing under its power to make rules and regulations.

The statute referred to in your inquiry numbered 4 (Section 31, as amended, supra, contains substantially the same provisions as those contained in Amendment XCI, supra.) Therefore, the examination of the applicant, meaning the answering of the questionnaire prescribed by the Supreme Court under the provisions of Amendment XCI, supra, was required to be in writing as early as December 19, 1951.

It cannot be said that an elector may be stricken from the registration list because he is unable to read and write if he was registered prior to September 17, 1953.

Section 181, supra, allows persons who are unable to read and write to be registered if the inability to read and write is due solely to physical disability. Furthermore, even though a person could not read or write, he could be registered under the provisions of paragraph 2 of Section 181, supra, if he were the owner of certain property or if he were married to a person owning certain property.

On November 14, 1946, Amendment LV to the Constitution of Alabama 1901, popularly known as the Boswell Amendment, was proclamed ratified. This amendment to the Constitition revised Section 181, supra, and required applicants for registration to be able to "read and write, understand and explain any article in the Constitution of the United States." This amendment also contained an exeption when persons were unable to read and write solely because of physical disability. The Boswell Amendment, supra, attempted to eliminate the property qualification contained in the original Section 181, supra, as an alternative to an applicant's being able to read and write, but on March 28, 1949, the Boswell Amendment was held invalid by the United States Supreme Court. **Schnell v. Davis**, 336 U. S. 933, 93 L. Ed. 1093, 69 S. Ct. 749; **Davis v. Schnell**, 81 Fed. Supp. 872. As I interpret the **Schnell** case, supra, the district court held the Boswell Amendment to be invalid in its entirety. Therefore, the original Section 181, supra, was in effect until December 19, 1951, when the Voters' Qualification Amendment was proclaimed ratified. Prior to December 19, 1951, therefore, it is my opinion that even though a person could not read or write he could become a qualified elector by satisfying

the property qualification contained in paragraph 2 of Section 181, supra, or if he were physically unable to read or write. On and after December 19, 1951, Amendment XCI, supra, requires an applicant to be able to read and write any article of the Constitution of the United States in the English language, the only exception being those who cannot read or write solely because of physical handicap.

The date referred to in your question numbered 5, therefore, is immaterial. If it appears that a person's name now appears on the registration list and he was registered on or after December 19, 1951, and it further appears that he was at the time of registration unable to read or write and that such inability was not due solely to physical handicap, such defect would be grounds for purging the name of such elector in accordance with Section 44, et seq., supra.

Very truly yours,

JOHN PATTERSON
Attorney General

June 15, 1956

Hon. John Graves,
State Comptroller,
Department of Finance,
Division of Control and Accounts,
CAPITOL.

Elections — Constitutional Amendments — State and State Departments — Counties — Officers and Offices — Opinions Overruled, Modified and Distinguished.

1. Under the provisions of Section 4 of Act No. 160, General and Local Acts 1955, page 406 (Title 17, Sections 427-432, 1955 Cumulative Pocket Part, Code of Alabama 1940), the State shall reimburse a county for one-half of all sums expended by the county for the payment of certain expenses in holding and conducting an election at which both amendments to the Constitution, affecting one or more counties or subdivisions thereof and amendments affecting the State as a whole, are voten upon. The constitutional amendments affecting one or more counties or subdivisions thereof need not necessarily affect the county in which the election is held in order to bring said election within the purview of said section. Section 5 of said Act has application to an election at which only amendments to the Constitution affecting the State as a whole are voted upon.

2. Elections for candidates for District Delegates to the Democratic National Convention do not come within any of the provisions of Act. No. 160, supra, as they are candidates for party offices and are not to be considered as either federal, state or county officials within the purview of Section 2 or 3 of said Act.

3. That part of an oninion rendered to Hon. Reo Kirkland, Judge of Probate, Escambia County, on October 31, 1955 (Ms.), which is in conflict with the above, is overruled and withdrawn.

Opinion by Assistant Attorney General Screws.

Dear Sir:

Your request for an official opinion bearing date of June 6, 1956, is as follows:

"During the 1955 Regular Session of the State Legislature there was enacted into law certain provisions pertaining to the costs of holding and conducting State and county elections. These are to be found in Act. No. 160, Regular Session 1955, page 406, and in substance require the State to bear part of the costs of holding certain of the elections in question. This legislation was sponsored by the Association of County Commissioners of Alabama for the purposes and intent of such legislation are perhaps best described in summary thereof published by this Association and furnished its membership prior to the opening of the 1955 Regular Session. Such summary is as follows:

" 'This is a bill to require the State to bear part of the costs of holding and conducting certain elections. At the present time, the counties bear the entire cost of holding and conducting all primary and general elections, other than municipal primary and general elections, and all the costs of holding and conducting elections on proposed amendments to the Constitution. This bill will require the State and counties to bear equally the costs of primary and general elections, when there are both State and county officials to be nominated or elected; will require the State to bear all the costs of primary and general elections when only State officers are to be nominated or elected; and will require the counties to bear all of the costs of primary and general elections when only county officials are to be nominated or elected. The bill will contain like provisions as to the costs of holding and conducting elections on proposed amendments to the Constitution. In the four years ending September 30, 1953, the total cost of elections in Alabama was $1,304,000.00. This averages out to $326,000.00 a year. Assuming the State's share would average out one-half the total, the annual saving to the counties would be $163,000.00.'

"From the above it is obvious that all that was sought by the sponsors of this legislation was that the State and counties share equally in the costs of those elections where both State or Federal as well as county officers

were nominated or elected or wherein both amendments to the Constitution affecting one or more counties or subdivisions thereof and amendments affecting the State of Alabama as a whole were voted upon. Such would appear to be the clearly expressed purpose and provisions of Sections 2 & 4 of Act No. 160, supra.

"You will also note that Sections 3 & 5 of the afore-mentioned Act No. 160 further provide that the State shall reimburse the county for all sums expended by the county in payment of expenses, as defined by the act, incurred in holding and conducting an election at which only candidates for Federal or State offices are nominated or elected or at which only amendments to the Constitution affecting the State of Alabama as a whole are voted upon. It was the general impression of those charged with the administration of this act that the provisions thereof were clear and specific and plans were adopted for administration in conformity with the provisions of the act.

"Under date of October 21, 1955 the Honorable Reo Kirkland, Judge of Probate, Escambia County, requested your official opinion as to certain matters pertaining to the holding of an election with reference to the issuance of bonds for the construction of a county jail, among these being the matter of the payment of the expenses of this jail bond election. In giving answer to these inquiries, under date of October 31, 1955, the writer thereof also included within such opinion certain statements and constructions of Act No. 160, supra, which I feel to be contrary to the expressed purposes and intent of that act. These statements pertain to and construe Section 4 & 5 of Act No. 160, supra, relating to the payment of the costs of holding and conducting elections upon amendments to the Constitution of this State.

"As I read and understand the opinion in question, and as it has been explained to me, such opinion would appear to hold that, unless there be upon the ballot voted upon an amendment, or amendments, pertaining to the specific county concerned either individually or as a member of a group less than the State as a whole, the State would bear the entire cost of the expense of such election in such county, as so defined in the act, irrespective of the fact that there be on the ballot 'both amendments to the Constitution affecting one or more counties or subdivisions thereof and amendments affecting the State of Alabama as a whole.' This appears to be at odds with the provisions of Section 4, spura, wherein the payment of expenses of election would appear to be based upon the type and nature of the election held and not the application of the amendments at issue to the individual counties. I might add that such interpretation is placing a heavy and unanticipated demand upon the General Fund of the State as it has resulted in county claims for reimbursement far in excess of the amount budgeted for such purpose based upon the common understanding of the requirements of this act by all concerned.

"In the light of the above I would request that you review and reconsider the opinion of October 31, 1955 and advise me as to the accuracy of that

portion thereof treating with the payment of expenses of election in those elections wherein both amendments to the Constitution affecting one or more counties or subdivisions thereof and amendments affecting the State of Alabama as a whole are voted upon.

"A second question has, likewise, arisen in the administration of this act. In the recent elections of May 1 and May 29 the ballot contained the names of candidates for District Delegates to the Democratic National Convention. In making payment of the expenses of these elections in what manner should I treat these candidates insofar as reimbursing the various counties for the expenses of conducting the elections in which these persons were candidates.

As stated in your letter, prior to the enactment of Act No. 160, General and Local Acts 1955, page 406 (Title 17, Sections 427-432, 1955 Cumulative Pocket Part, Code of Alabama 1940), the counties bore the entire cost of holding and conducting all primary and general elections, other than municipal primary and general elections, and all the costs of holding and conducting elections on proposed amendments to the Constitution.

Act No. 160, supra, provided that the State shall reimburse a county, either in whole or in part, for certain enumerated expenses in holding and conducting certain elections and appropriated funds therefor. Section 1 of said Act enumerated those certain "expenses" which were included within said Act. Sections 2, 3, 4, and 5 provided for reimbursement to a county by the State **in certain types** of elections. Said sections provide as follows:

"Section 2. The State of Alabama shall reimburse a county for one half of all sums expended by the county in payment of expenses incurred in holding and conducting an election in which candidates for both federal or state and county offices are nominated or both federal or state and county officials are elected.

"Section 3. The State of Alabama shall reimburse a county for all sums expended by the county in payment of expenses incurred in holding and conducting an election in which only candidates for federal or state offices are nominated or federal or state officials are elected.

"Section 4. The State of Alabama shall reimburse a county for one half of all sums expended by the county in payment of expenses incurred in holding and conducting an election at which both amendments to the Constitution affecting one or more counties or subdivisions thereof and amendments affecting the State of Alabama as a whole are voted upon.

"Section 5. The State of Alabama shall reimburse a county for all sums expended by the county in payment of expenses incurred in holding and conducting an election at which only amendments to the Constitution affecting the State of Alabama as a whole are voted upon."

Unless an election comes within the purview of one of the four above quoted sections, there would be no reimbursement to a county by the State.

Your first question relates to an interpretation of Section 4 of Act No. 160, supra. In my judgment, the type of election contemplated under said Section 4 is one wherein **both** amendments to the Constitution, affecting one or more counties or subdivisions thereof and amendments affecting the State of Alabama as a whole, are voted upon. This does not mean that the amendments affecting one or more counties or subdivisions thereof has to affect the county or the subdivision holding the election. An election wherein any amendment affecting any county or subdivision thereof is voted on is sufficient to bring the election within the purview of said section. It will be noted that the State shall reimburse "a county" and not "that county" which may be affected by the constitutional amendment. Said section contemplates the voting on two types of constitutional amendments, one affecting any one or more counties or subdivisions thereof and the other type affecting the State as a whole. Section 5 of Act No. 160, supra, has application to an election at which **only** amendments to the Constitution affecting the State as a whole are voted upon.

The opinion of this office to Hon. Reo Kirkland, Judge of Probate, Escambia County, rendered October 31, 1955 (Ms.), construed said Section 4 as contemplating that the constitutional amendments, which affected one or more counties or subdivisions thereof, necessarily applied to the county in which the election was held. In this respect, said opinion was laid in error and is hereby overruled and withdrawn insofar as this conclusion is concerned.

In answer to your second question, it is my opinion that elections for candidates for District Delegates to the Democratic National Convention do not come within any of the provisions of Act No. 160, supra. Said candidates are candidates for party offices and are not to be considered either as federal, state or county officials within the purview of Section 2 or 3 of Act No. 160, supra. Cf. Quarterly Report of Attorney General, Vol. 26, page 97. Therefore it follows that Act No. 160, supra, has no application whatsoever to elections for candidates for District Delegates to the Democratic National Convention.

That portion of the opinion of this office rendered under date of October 31, 1955, supra, which is in conflict with the above, is hereby overruled and withdrawn.

Very truly yours,

JOHN PATTERSON

Attorney General

June 25, 1956

Hon. Kenneth Cooper,
Circuit Solicitor,
28th Judicial Circuit,
Bay Minette, Alabama.

Sheriffs — Expenses — Counties — Solicitors.

1. The sheriff, in making investigations under Title 54, Sections 9 and 10, Code of Alabama 1940, is entitled to be paid by the county for the expenses of having someone make photographs of the scene of the crime when the county governing body considers same reasonably necessary to the investigation of a case.

2. That portion of the opinion contained in Quarterly Report of Attorney General, Vol. 38, page 58, holding that the sheriff is not authorized under Title 54, Sections 9 and 10, Code of Alabama 1940, to be paid by the county for expenses of having someone make photographs of the scene of the crime, is expressly overruled and withdrawn.

Opinion by Assistant Attorney General Gallion.

Dear Sir:

Your request for an official opinion, bearing date of June 13, 1956, is as follows:

"In order to insure that the best evidence is obtained for use in the trial of felony cases, I desire to instruct the Sheriff of Baldwin County, under the provisions of Sections 9 and 10, Title 54, Code of Alabama, to obtain, where possible, photoghaphs of the scenes of all felonies, particularly felonies such as murder. It is not necessary for men to enumerate the value of pictures at the scene where a deceased is found lying and the location of the physical objects in relation thereto. Such photographs are of great value in administration of justice and enforcement of the criminal laws. As the sheriff operates he does not have the necessary equipment nor the trained personnel to perform this undertaking. However, the services of the professional photographers who could take the pictures are available in various parts of our county. Of course, the State Toxocologist takes pictures of the scenes whenever he is called in.

"An opinion rendered by the Attorney General on March 20, 1945 (Quarterly Report of the Attorney General, Vol. XXXVIII) held that 'the sheriff is not authorized under this title and section (i. e. Title 54, Sections 9 and 10, to be paid by the county for the expenses of having someone make photographs of the scene of the crime.' The same opinion also held 'the

sheriff in making investigations under Title 54, Section 9 and 10 of the Code of Alabama, is not entitled to pay by the county for expenses incurred in a funeral home or elsewhere by the State Toxicologist performing an autopsy.' Another opinion rendered by the Attorney General (Quarterly Report of the Attorney General, Vol. 47, page 114) on May 29, 1947, held that the sheriff was entitled to his expenses, thus reversing the earlier opinion. However, I am unable to find any other opinion reversing the one which held the sheriff could not collect his expenses for having someone else make the photographs when directed to do so by the Solicitor.

"Will you please advise if, under the circumstances enumerated in paragraph one of this letter, the sheriff can be paid by the county for expenses incurred in having a photographer make pictures of the scene of a crime, particularly a felony, where the sheriff is ordered to do so by the Solicitor under the provisions of Sections 9 and 10, of Title 54, Code of Alabama?"

The opinion to which you refer, holding that the sheriff is not authorized under Title 54, Sections 9 and 10, Code of Alabama 1940, to be paid by the county for the expenses of having someone make photographs of the scene of the crime, was rendered the Hon. James T. Beeland, Judge of Probate of Butler County, under date of March 20, 1945, and is officially cited as Quarterly Report of Attorney General, Vol. 38, page 58.

After studied reconsideration of this opinion, I have reached the conclusion that the part of the opinion relating to the above is in error.

Section 9, supra, reads in pertinent part as follows:

"§ 9. Investigations by sheriffs; reports required, to whom made.—The sheriffs in their respective counties whenever directed to do so in writing such solicitors, or by the attorney general or governor, shall make special investigation of any alleged violation of the law in their counties . . ."

Section 10, supra, reads in pertinent part as follows:

"§ 10. Expenses of investigations, how paid.—The expense of such investigation when so ordered shall be paid from the county treasury, upon a warrant properly drawn; and after the report is made, the sheriff shall file with the board of revenue or court of county commissioners a detailed sworn statement of his expenses accompanied by the written approval of the officer directing the investigations, and the board of revenue or court of county commissioners shall audit and allow only so much thereof as it shall find **reasonably necessary** unless it is approved by the governor or attorney general, . . . "(Emphasis supplied.)

Notwithstanding the principals of law that the law of fees and costs is strictly construed and those who accept public offices which require them

to render services to the state must take office cum onere, the wording of Section 10, supra, allows the county board of revenue or court of county commissioners to pay such expenses of a sheriff making an investigation under Section 9, supra, as are "reasonably necessary."

Obviously, the legislature could not properly itemize what expenses should be considered as reasonably necessary in the investigation of a particular case and what expenses should be considerad unnecessary. The requirements of each case in developing an investigation differ widely and the requirements in each case must, therefore, be considered individually. It is my opinion that such a matter as the county governing body approving the sheriff's expenses, under Section 10, supra, is something that directs itself to the discretion of the county governing body as to whether or not expenses are reasonably necessary. The taking of photographs in some cases might be completely unnecessary and in other cases absolutely essential to a proper gathering of evidence and conducting of an investigation.

Here, where reference is made to the taking of photographs at the scene of the crime of felonies, particularly murders, it is to my mind well within the meaning and legislative intent of the phraseology "reasonably necessary" when so deemed by the solicitor and sheriff.

That portion of the previous opinion of this office contained in Quarterly Report of Attorney General, Vol. 38, page 58, heretofore referred to, is, therefore, expressly overruled and withdrawn.

The conclusion herein reached appears fortified by Title 54, Section 5, subparagraph (4), Code of Alabama 1940, which is as follows:

"(4) It shall be the duty of the sheriffs in their respective counties by themselves or deputies to ferret out crime, to apprehend and arrest criminals, **and in so far as within their power to secure evidence of crime in their counties, and to present a report of the evidence so secured to the solicitor or deputy solicitor for the county,** or if there is an inferior or special statutory court within the county in which a solicitor prosecutes criminal cases, then to such solicitor." (Emphasis supplied.)

Your attention is also invited to Act No. 593, General and Local Acts 1949, page 925, which is in pertinent part as follows:

"Section 1. That the county governing body of each of the several counties of the State may, in its discretion, and upon application of the sheriff of the county, purchase for the use of the sheriff any equipment or supplies and pay for any services performed for the sheriff which are reasonably necessary for the suppression of crime, the apprehension of criminals, or the proper performance of the sheriff's duties.

"Section 2. That the cost of any such purchases or services, upon approval by the county governing body, may be paid out of the general fund of the county."

Very truly yours,

JOHN PATTERSON,

Attorney General.

June 29, 1956

Dr. R. E. Gwin, Chairman,
Board of Directors,
The Medical Clinic Board of the Town of Sumiton
Sumiton, Alabama

Hon. J. I. Ellison, Mayor
Town of Sumiton
Sumiton Alabama

Hospitals—Municipalities.

1. A board created by virtue of Act No. 516, General and Local Acts 1955, page 1160, must lease its medical clinic for an amount sufficient to pay the principal of and interest on the bonds issued to finance the clinic, to build up and maintain any reserves deemed by the board of directors to the advisable in connection therewith, and to pay the cost of maintaining the clinic in good repair and keeping it properly insured.

2. A board created by virtue of Act No. 516, General and Local Acts 1955, page 1160, may lease its medical clinic for a term shorter than that period of time necessary to pay in full the bonds issued by such board.

3. A board created by virtue of Act No. 516, General and Local Acts 1955, page 1160, may not sell its medical clinic.

4. A municipality may not lease a medical clinic from a board created by virtue of Act No. 516, General and Local Acts 1955, page 1160.

Opinion by Assistant Attorney General Gish.

Gentlemen:

Your request for an official opinion bearing date of June 1, 1956, is as follows:

"Re: Proposed bond issue of The Medical Clinic Board of the Town of Sumiton, Alabama.

"On February 17, 1956, a certificate of incorporation of The Medical Clinic Board of the Town of Sumiton was filed in the Probate Office of Walker County, Alabama, all as provided by Act No. 516 adopted at the 1955 Regular Session of the Legislature, approved September 9, 1955, as set out in Vol. 2 of the Acts, at page 1160.

"Consistent with the objects for which the corporation was formed, the Board of Directors have tentatively decided that a bond issue in the principal sum of $40,000 will have to be floated and payment of the bonds will have to extend over a 20 year period. With this in view, the Board would like to respectfully request your opinion on the following questions:

1. Under Act 516, is T Medical Clinic Board authorized to enter into a lease for a term less than 20 years (the bond issue contemplated will extend over a 20 year period)?

"2. Would The Medical Clinic Board have the authority, if it is deemed to the public interest, to sell the building and equipment of The Medical Clinic, same to be constructed and equipped out of the funds derived from the proposed bond issue?

"3. Would the Town of Sumiton, a municipal corporation, have the authority to quit-claim its interest to the property, if The Medical Clinic Board of the Town of Sumiton authorized the sale and same is to the public interest?

"4. Can the Town of Sumiton enter into a contract of lease with the Medical Clinic Board of the Town of Sumiton and occupy a position as sub-Lessee?

"Your early attention to this matter will be appreciated."

Act No. 516, General and Local Acts 1955, page 1160, has not heretofore been construed by the appellate courts of this State or this office.

Act No. 516, supra, is silent as to whether your board may lease the medical clinic for a period of time which is shorter than that period of time required to pay in full the bonds issued by your board. However, Section 7 of said act provides that the corporation shall lease the clinic or its facilities to

a lessee or lessees, under an agreement providing for payment to the corporation of such rentals as will be sufficient to pay the principal of and interest on the bonds issued to finance the clinic, to build up and maintain any reserves deemed by the board of directors to be advisable in connection therewith and, unless the agreement obligates the lessee to pay for the maintenance and the insurance of the clinic, to pay the cost of maintaining the clinic in good repair and keeping it properly insured.

I am of the opinion that your board may lease the medical clinic for a term shorter than the period necessary to pay the bonds in full, provided that the rentals to be obtained under the lease are in an amount sufficient to meet the above-mentioned requirements of Section 7, supra.

Therefore, your first question is answered in the affirmative upon the conditions stated.

Act No. 516, supra, does not authorize your board to sell the medical clinic. Under Section 5 of Act No. 516, supra, when the principal of and the interest on any bonds of your board have been paid in full, then the medical clinic shall become the property of the Town of Sumiton. For this reason, I am of the opinion that the purpose of Act No. 516, supra, would be defeated by a sale of the medical clinic.

Therefore, your second question is answered in the negative.

In the light of the answer to your second question, your third question does not require an answer.

By virtue of Section 5 of Act No. 516, supra, no municipality shall pledge its faith or credit for the payment of any debt incurred or bonds issued by such corporation. I am of the opinion that this provision would be indirectly violated if the Town of Sumiton becomes a lessee of the medical clinic. This would not be consistent with the statute here under consideration.

Therefore, your fourth question is answered in the negative.

Very truly yours,

JOHN PATTERSON

Attorney General

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